

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 30, 2019 2:29 PM
To: Tracy, Mary
Subject: FW: Court Rules 3.7 et al

From: Matt Newberg [mailto:mnewberg@co.garfield.wa.us]
Sent: Tuesday, April 30, 2019 2:28 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Court Rules 3.7 et al

I am writing in opposition to the suggested rule amendments proposed by the WACDL. I echo the concerns of those who have commented against the proposal prior to myself.

In general, I believe each of the suggested amendments is unnecessary as existing court rules, case law, and statutes address the concerns of the rule proponents. I fear the effect of these amendments will be to chill victim and witness participation; require judicial comments on evidence; and promote a distrust of law enforcement.

Suggested rules 3.8 and 4.11 (which would require recording) will likely create a built-in disincentive for victim and witness participation. Victims and witnesses may be justifiably concerned that their assailant, and his/her associates, will receive a copy of the recording (see suggested rule 4.7), causing them to be more reluctant/guarded in their involvement. Many victims/witnesses will have their safety implicated. If the witness is more reserved and/or guarded in the recording procedure, it will most definitely be used against them when they testify more fully at trial. It also goes against the primary purposes of discovery and trial which is to have full and open disclosure while seeking the truth.

Suggested Rule 4.7 allows too much victim/witness information to be distributed about in written format. Full names, locations, and intimate details do not need to be shared in this way. A defendant already has this information available to him/her through their attorney and normal discovery practices. But what the current rule prevents is the copying and distribution of un-redacted documents to the defendant. The proposed rule will allow the defendant to copy and distribute documents at will. This is dangerous as we do not want copies of this discovery floating about jails or to other bad actors who can use the information to the detriment of the victim(s) and/or witnesses.

Lastly, the Supreme Court should disfavor the use of court rules to create substantive law, and should instead, in my opinion, reserve rules for procedural matters.

Respectfully,

Matt Newberg
WSBA #36674